

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONNIE BARBAROTTO and
HENRY BARBAROTTO, husband
and wife,

Plaintiffs

V.

HERSHEY ENTERTAINMENT &
RESORTS COMPANY,

Defendant

CIVIL ACTION NO. 02-4389

(Judge Reed)

DEFENDANT'S MOTION TO TRANSFER

Defendant Hershey Entertainment and Resorts Co. ("HE&R"), by its undersigned counsel, moves to transfer this action pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and in the interest of justice. In support of this Motion, Defendant avers as follows:

Background

1. Plaintiffs Connie and Henry Barbarotto are citizens of New York, residing at 718 Kimball Avenue, Yonkers, New York. Jenkins Affidavit, ¶ 13.
2. Defendant HE&R is a Pennsylvania Corporation with headquarters located at 300 Park Boulevard, Hershey, Pennsylvania, 17033.
3. HE&R is in the business of operating HERSHEY PARK and HERSHEY PARK Stadium, among other entertainment and resort venues. Jenkins Affidavit, ¶ 3.

4. HERSHEY PARK and HERSHEY PARK Stadium are located in Hershey, Pennsylvania, in the Middle District (Harrisburg Division).
5. This action arises out of a trip and fall accident which allegedly occurred while Plaintiffs were attending an 'Nsync concert at HERSHEY PARK Stadium. Complaint, ¶ 6.
6. To date, HE&R has identified the following potential liability witnesses:
 - a. John Tshudy, HE&R's Directors of Buildings and Grounds Maintenance;
 - b. Mona Hamilton, a Registered Nurse from the HERSHEY PARK First Aid staff, who assisted Plaintiffs at the time of the accident;
 - c. Allen Kintzer, an EMT from the HERSHEY PARK staff, who assisted Plaintiffs at the time of the accident; and
 - d. Timothy Shellenberger, Director of Safety & Security for HERSHEY PARK.

Jenkins Affidavit, ¶¶ 6-12.

7. All of the witnesses listed in paragraph 6, above, work at HE&R in Hershey, and live in the Hershey/Harrisburg area. Jenkins Affidavit, ¶¶ 6-12.
8. Information provided by Plaintiff to HE&R thus far indicates Plaintiff underwent medical treatment in New York. Jenkins Affidavit, ¶ 14.

9. Information provided by Plaintiff to HE&R thus far indicates that none of Plaintiff's witnesses are located within the Eastern District, but rather, are located in New York. *Id.*
10. The only connection this case has to the Eastern District is that Plaintiffs' counsel maintains his office in Philadelphia.

MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

11. Paragraphs 1-10, inclusive, are incorporated as if set forth fully.
12. Under 28 U.S.C. § 1404(a), a district court may transfer any civil action to any other district where it might have been brought, for the convenience of parties and witnesses and in the interest of justice.
13. Under 28 U.S.C. § 1391(a), this action could have been brought in the United States Court for the Middle District of Pennsylvania, where HE&R is located and where the events giving rise to the claim allegedly occurred.
14. Transferring this action to the Middle District (Harrisburg Division) would further the interests of justice and be more convenient for the parties and witnesses in light of the following considerations:
 - a) Plaintiffs do not reside in the Eastern District of Pennsylvania;
 - b) information provided by Plaintiffs thus far indicate that none of Plaintiffs' witnesses are located within the Eastern District;
 - c) Defendant HE&R is located within the Middle District (Harrisburg Division);
 - d) the site of the alleged accident is within the Middle District (Harrisburg Division);

- e) all of HE&R's witnesses and documents concerning the alleged accident are located within the Middle District (Harrisburg Division); and
- f) the only connection this case has to the Eastern District is that Plaintiffs' counsel maintains his office in Philadelphia.

WHEREFORE, Defendant Hershey Entertainment and Resorts Co. respectfully requests that the Court transfer this action to the United States District Court for the Middle District of Pennsylvania (Harrisburg Division), pursuant to 28 U.S.C. § 1404(a).

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By _____
Carol A. Steinour, Esquire
Susan V. Metcalfe, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for Defendant
Hershey Entertainment & Resorts
Company

Dated: July 31, 2002

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HERSHEY ENTERTAINMENT &
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(Judge Reed)

ORDER

AND NOW, this ____ day of _____, 2002, upon consideration of Defendant's Motion to Transfer, Affidavit of Edna Jenkins in Support of Defendant's Motion to Transfer, and Brief in Support of Defendant's Motion to Transfer, it is hereby ORDERED that Defendant's Motion is granted.

This action is transferred to the United States District Court for the Middle District of Pennsylvania (Harrisburg Division).

Lowell A. Reed, Jr.
United States District Judge